



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:30 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on May 19, 2016, he sent a copy of the Application for Dispute Resolution and Notice of Hearing to the tenant by registered mail.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent in the amount of \$1240.00 that was payable on June 1, 2016. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

A written tenancy agreement was entered into and signed by the parties on January 29, 2016. A copy of the written agreement was provided on file. The tenancy began on January 1, 2016 with a monthly rent of \$1163.00 payable on the 1st day of each month. In February 2016 the monthly rent was increased to \$1240.00 to include internet and phone service not included in the original agreement. The tenant paid a security deposit of \$450.00 at the start of the tenancy which the landlord continues to hold.

The landlord's claim is for outstanding rent in the amount of \$3720.00. The landlord testified that this includes unpaid rent for the months of April, May and June 2016.

The landlord testified that on April 13, 2016 he served the tenant with the 10 day Notice to End Tenancy for unpaid rent or utilities by slipping a copy under the door of the rental premises. The landlord provided an e-mail sent from the tenant to the landlord dated April 18, 2016 in which the tenant states in part the following, *"A reminder that 24 hours notice is required to enter the home. Following this logic, your property manager P.L. served the attached papers illegally on 4/13 at 7pm PST."*

Analysis

Section 71(2)(c) of the Act provides the Director the authority to order that a document is sufficiently given or served for the purposes of the Act, in cases where it has not been served in strict accordance with section 88 of the Act. Although the tenant was not served the Notice to End Tenancy in strict accordance with section 88, I accept the landlord's evidence and I am satisfied that the tenant was sufficiently served on April 13, 2016. The e-mail evidence provided by the landlord confirms that the tenant acknowledged receiving some papers on April 13, 2016. As the landlord testified that the Notice to End Tenancy was served on this date, I find that on a balance of probabilities it was the Notice to End Tenancy which the tenant acknowledged receiving.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, April 24, 2016.

I accept the landlord's uncontested evidence and find that the tenant was obligated to pay monthly rent in the amount of \$1240.00 but failed to pay rent that was payable for the months of April, May and June 2016. I accept the landlord's claim for outstanding rent of \$3720.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$3820.00.

The landlord continues to hold a security deposit of \$450.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$3270.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3270.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 09, 2016

Residential Tenancy Branch